

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA	)	<b>No.</b>
	)	
v.	)	Violations: Title 18,
	)	United States Code,
ROSS MARKS and	)	Sections 1343, 1365(a), and
CHARLES FARINELLA	)	2; and Title 21, United States
		Code, Sections 331(a) and
		333(a)(2)

**Count One**

The SPECIAL FEBRUARY 2005-1 GRAND JURY charges:

1. At times material to this indictment:

a. Division Sales U.S., LLC (“Division Sales”) was a limited liability company with its principal place of business located at Des Plaines, in the Northern District of Illinois. Division Sales was in the business of buying merchandise and food products, then reselling them to discount stores and wholesale distributors throughout the United States.

b. Defendant ROSS MARKS was the President of Division Sales. Defendant MARKS was responsible for the day-to-day activities at Division Sales, including, but not limited to, sales of products purchased by Division Sales.

c. American Merchandise Group, Inc. (“AMG”) was a business corporation organized under the law of the State of Illinois, with its principal place of business located at Woodridge, in the Northern District of Illinois. AMG was in the business of buying merchandise and food products, then reselling them to discount stores and wholesale distributors throughout the United States. AMG subleased space from Division Sales in Des Plaines, Illinois.

d. Defendant CHARLES FARINELLA was the President of AMG. Defendant

FARINELLA was responsible for the day-to-day activities at AMG, including, but not limited to, sales of products purchased by AMG.

2. From approximately May 2003 through approximately July 2004, at Des Plaines, in the Northern District of Illinois, Eastern Division, and elsewhere,

ROSS MARKS and  
CHARLES FARINELLA,

defendants herein, devised, intended to devise, and participated in a scheme to defraud and to obtain money and property by means of materially false and fraudulent pretenses, representations, and promises, which scheme is further described as follows:

3. It was part of the scheme that Ross MARKS and Charles FARINELLA purchased approximately 1.6 million bottles of salad dressing with expired or imminent expiration dates, relabeled the bottles with false expiration dates that extended the sell-by date of the bottles by approximately one year, and sold the dressing to unsuspecting distributors and retail establishments which, in turn, sold the salad dressing to the general public.

4. It was further part of the scheme that in or about May 2003, defendants Ross MARKS and Charles FARINELLA bought approximately 1.6 million bottles of Henri's salad dressing from ACH Food Companies, Inc. ("ACH"), a company located in Memphis, Tennessee, in exchange for \$50,000. The \$50,000 was wired from AMG's bank account at American National Bank in Chicago, Illinois, to ACH's bank account at First Tennessee Bank in Memphis, Tennessee. All of the salad dressing bottles contained labels indicating "sell by" dates ranging between January and June, 2003. At the time of the purchase, ACH advised defendant Farinella in writing of the expiration dates on the salad dressing and warned that ACH could only guarantee the freshness of the products for 180 days past the "sell-by" dates on the labels.

5. It was further part of the scheme that in approximately May 2003, defendants MARKS and FARINELLA met with Individual A, a broker of printing and graphic design jobs who had previously done work for Division Sales, in MARKS' office at Division Sales. During this meeting, MARKS and FARINELLA ordered from Individual A approximately two million small sticker labels that were to be used to cover the expiration dates on the original salad dressing bottle labels, which extended the expiration dates by approximately one year. MARKS specifically requested a label that was sticky enough that, if removed, would destroy the label underneath.

6. It was further part of the scheme that, in approximately May 2003, defendant MARKS instructed his assistant at Division Sales to type a letter falsely stating that ACH had granted permission to relabel the Henri's salad dressing bottles with expiration dates of May 25, 2004. MARKS further instructed his secretary to photocopy the letter over a genuine letter from ACH so that the ACH letterhead appeared at the top of the phony letter, and the signature of the ACH Vice President for Quality Assurance appeared at the bottom of the phony letter.

7. It was further part of the scheme that, in approximately June 2003, defendant FARINELLA hired a company in St. Louis, Missouri to apply the new labels containing the false expiration date on top of the old labels on all of the bottles of Henri's salad dressing. Defendant FARINELLA told a representative of this company that he should carefully cover the original expiration dates with new date labels, and also that he should use a black marker to conceal the original expiration dates on the cases containing the bottles. FARINELLA told the representative of the company hired to perform the relabeling that he had a letter from the manufacturer that gave him permission to put new expiration date labels on the dressing.

8. It was further part of the scheme that, in approximately June 2003, defendant MARKS

told the sales representatives employed at Division Sales to sell the relabeled salad dressing. He falsely represented to the sales representatives that he had permission from ACH to relabel the product, and instructed the sales representatives to offer to provide customers who complained with a copy of the letter he had created in which ACH purported to authorize the relabeling.

9. It was further part of the scheme that, from approximately June 2003 through approximately July 2003, defendants MARKS and FARINELLA falsely represented to their customers that ACH Foods had given the defendants permission to relabel the salad dressing with a new expiration date.

10. It was further part of the scheme that, in or about August 2003, defendant MARKS instructed his assistant to record an outgoing voice mail message on a toll-free phone line maintained by Division Sales. The voice mail message, dictated by defendant MARKS to his assistant, falsely assured consumers of Henri's salad dressing that the dressing was fresh, and falsely represented that the original expiration date labels were incorrectly applied.

11. It was further part of the scheme that, on or about April 5, 2004, defendant FARINELLA falsely assured a representative of ACH Foods that he had sought permission from the FDA to relabel the salad dressing, and that the bottles had been relabeled in accord with FDA requirements on expiration dates. FARINELLA further told the representative of ACH to refer consumer complaints to him.

12. By means of their materially false and misleading representations, between June 2003 and July 2004, defendants MARKS and FARINELLA, doing business as Division Sales and American Merchandise Group, respectively, sold in excess of 1.6 million bottles of Henri's salad dressing to wholesale distributors and discount stores throughout the United States for

approximately \$546,000.

13. It was further part of the scheme that defendants MARKS and FARINELLA misrepresented, concealed, hid, and caused to be misrepresented, concealed, and hidden, acts done in furtherance of the scheme and the purpose of those acts.

14. On or about May 20, 2003, at Woodridge, in the Northern District of Illinois, Eastern Division, and elsewhere,

ROSS MARKS and  
CHARLES FARINELLA,

defendants herein, for the purpose of executing the aforesaid scheme, knowingly transmitted and caused to be transmitted by means of a wire communication in interstate commerce certain signs, signals, and sounds, namely, a wire transfer from American National Bank in Chicago, Illinois, to First Tennessee Bank in Memphis, Tennessee, in the amount of \$50,000;

In violation of Title 18, United States Code, Sections 1343 and 2.

## **Count Two**

The SPECIAL FEBRUARY 2005-1 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are incorporated and realleged as though fully set forth herein.

2. On or about October 14, 2003, at Woodridge, in the Northern District of Illinois, Eastern Division, and elsewhere,

ROSS MARKS and  
CHARLES FARINELLA,

defendants herein, for the purpose of executing the aforesaid scheme, knowingly transmitted and caused to be transmitted by means of a wire communication in interstate commerce certain signs, signals, and sounds, namely, a wire transfer from InSouth Bank in Memphis, Tennessee, to American National Bank in Chicago, Illinois, in the amount of \$35,154, which was payment for the purchase of approximately 20,000 bottles of salad dressing from AMG;

In violation of Title 18, United States Code, Sections 1343 and 2.

### **Count Three**

The SPECIAL FEBRUARY 2005-1 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are incorporated and realleged as though fully set forth herein.

2. On or about June 8, 2004, at Woodridge, in the Northern District of Illinois, Eastern Division, and elsewhere,

ROSS MARKS and  
CHARLES FARINELLA,

defendants herein, for the purpose of executing the aforesaid scheme, knowingly transmitted and caused to be transmitted by means of a wire communication in interstate commerce certain signs, signals, and sounds, namely, a facsimile transmission from Liberty Bell Wholesale in Liberty, Indiana, to American Merchandise Group in Woodridge, Illinois, relating to the payment for the purchase of approximately 1,040 bottles of salad dressing from AMG;

In violation of Title 18, United States Code, Sections 1343 and 2.

### **Count Four**

The SPECIAL FEBRUARY 2005-1 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment are incorporated and realleged as though fully set forth herein.

2. At times material to this indictment:

a. The United States Food and Drug Administration (“FDA”) was an agency of the United States government entrusted with responsibility for protecting the health and safety of the American public by ensuring, among other things, that foods are safe for human consumption before they may be held and offered for sale to the people of the United States. Pursuant to this statutory mandate, FDA regulated the manufacture, labeling, and shipment in interstate commerce of foods.

b. Under the Federal Food, Drug and Cosmetic Act (Title 21, United States Code, §§ 301-397, the “FDCA”), a “food” included “articles used for food or drink for man or other animals, and articles used for components of any such article.” 21 U.S.C. §§ 321(f)(1) and (3).

c. The FDCA defined the term “label” as “a display of written, printed, or graphic matter upon the immediate container of any articles.” 21 U.S.C. § 321 (k).

d. The FDCA defined the term “labeling” at 21 U.S.C. § 321 (m) as “all labels and other written, printed, or graphic matter upon any article or any of its containers or wrappers, or accompanying such article.”

e. The FDCA deemed a food to be misbranded if its labeling was false or misleading in any particular. 21 U.S.C. § 343 (a).

f. The introduction into interstate commerce of any food that is misbranded and

the delivery or proffered delivery in interstate commerce of any food that is misbranded, for pay or otherwise, was prohibited by law, pursuant to 21 U.S.C. §§ 331(a).

3. From approximately June 2003 through approximately July 2004, at Des Plaines, in the Northern District of Illinois, Eastern Division, and elsewhere,

ROSS MARKS and  
CHARLES FARINELLA,

defendants herein, did with intent to defraud and mislead introduce and deliver for introduction into interstate commerce a food that was misbranded, and that bore labels with false and misleading expiration dates;

In violation of Title 21, United States Code, Sections 331(a) and 333(a)(2), and Title 18, United States Code, Section 2.

**Count Five**

The SPECIAL FEBRUARY 2005-1 GRAND JURY further charges:

1. Paragraphs 1 through 13 of Count One of this indictment this indictment are incorporated and realleged as though fully set forth herein.

2. From approximately May 2003 through December 2003, at Des Plaines, in the Northern District of Illinois, Eastern Division, and elsewhere,

ROSS MARKS and  
CHARLES FARINELLA,

defendants herein, with reckless disregard for the risk that other persons would be placed in danger of death or bodily injury and under circumstances manifesting extreme indifference to such risk, did tamper with a consumer product that affected interstate commerce, and its labeling and containers; namely, approximately 1.6 million bottles of Henri's Salad Dressing;

In violation of Title 18, United States Code, Sections 1365(a) and 2.

## **FORFEITURE ALLEGATION**

The SPECIAL FEBRUARY 2005-1 GRAND JURY further charges:

1. The allegations contained in Counts 1 through 13 of this Indictment are realleged and incorporated herein by reference for the purpose of alleging forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

2. As a result of their violations of Title 18, United States Code, Section 1343 as alleged in the foregoing Indictment,

ROSS MARKS and  
CHUCK FARINELLA,

defendants herein, shall forfeit to the United States, pursuant to Title 18, United States Code, Section, 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), any and all right, title and interest in property, real and personal, which constitutes and is derived from proceeds traceable to the charged offense.

3. The interests of the defendants jointly and severally subject to forfeiture pursuant to Title 18, United States Code, Section, 981(a)(1)(C) and Title 28, United States Code, Section 2461(c) include funds in the amount of \$546,000. .

4. If any of the property subject to forfeiture and described above, as a result of any act or omission of the defendant:

- (a) Cannot be located upon the exercise of due diligence;
- (b) Has been transferred or sold to, or deposited with, a third party;
- (c) Has been placed beyond the jurisdiction of the Court;
- (d) Has been substantially diminished in value; or

- (e) Has been commingled with other property which cannot be divided without difficulty,

the United States of America shall be entitled to forfeiture of substitute property under the provisions of Title 21, United States Code, Section 853(p), as incorporated by Title 28, United States Code,

Section 2461(c).

All pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c).

A TRUE BILL:

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FOREPERSON

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UNITED STATES ATTORNEY